



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,508	01/20/2004	Todomu Nishino	09483/0200797-US0	4227
7278	7590	12/08/2005	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			MIGGINS, MICHAEL C	
			ART UNIT	PAPER NUMBER
			1772	
DATE MAILED: 12/08/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/761,508

Applicant(s)

NISHINO ET AL.

Examiner

Michael C. Miggins

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 22-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. This application contains claims 22-26 drawn to an invention nonelected with traverse in Paper No. 12/3/04.

A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

REJECTIONS WITHDRAWN

2. All of the rejections set forth in the non-final rejection of 5/27/05 have been withdrawn.

REJECTIONS REPEATED

3. There are no rejections repeated.

NEW REJECTIONS

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Kobayashi et al. (US 4125032).

Kobayashi discloses a heat resistant plastic tube (column 9, lines 53-63) comprising a polyester-based elastomer including at least one of a polyester-polyester block copolymer with a hard segment component and a soft segment component and a polyester-polyether block copolymer with a hard segment component and a soft segment component (column 5, lines 5-66), wherein the tube comprises a single layer of the polyester-based elastomer (column 9, lines 53-63) (applies to instant claims 1-2).

The properties recited in claim 1 with regards to the shape retainability, inner diameter change rate, dimensional stability performance test, and flexibility retainability, which are all related to heat stability, are inherent in the invention of Kobayashi since the materials and structure are the same as applicant's, as described above, and because Kobayashi discloses very high heat stability and deflection temperature (column 9, lines 53-63, column 10, lines 25-30, column 17, lines 40-51, column 18, lines 28-39 and Table 6) (applies to instant claim 1).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi et al. (US 4125032).

Kobayashi discloses a heat resistant plastic tube (column 9, lines 53-63) comprising a polyester-based elastomer including at least one of a polyester-polyester block copolymer with a hard segment component and a soft segment component and a polyester-polyether block copolymer with a hard segment component and a soft segment component (column 5, lines 5-66), wherein the tube comprises a single layer of the polyester-based elastomer (column 9, lines 53-63) (applies to instant claims 1-2).

The properties recited in claim 1 with regards to the shape retainability, inner diameter change rate, dimensional stability performance test, and flexibility retainability, which are all related to heat stability, are necessarily present in the invention of Kobayashi since the materials and structure are the same as applicant's, as described above, and because Kobayashi discloses very high heat stability and deflection temperature (column 9, lines 53-63, column 10, lines 25-30, column 17, lines 40-51, column 18, lines 28-39 and Table 6) (applies to instant claim 1).

8. Claims 3-5 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi et al. (US 4125032) in view of JP 2000290483 (English abstract provided herein).

Kobayashi fails to disclose an inner layer comprising a polyester-based elastomer and an outer layer formed on an outside of the inner layer and comprising a crystalline polyester-based resin, an inner layer comprising a crystalline polyester-based resin and outer layer formed on an outside of the inner layer and comprising a polyester-based elastomer.

JP 2000290483 an inner layer comprising a polyester-based elastomer and an outer layer formed on an outside of the inner layer and comprising a crystalline polyester-based resin, an inner layer comprising a crystalline polyester-based resin and outer layer formed on an outside of the inner layer and comprising a polyester-based elastomer (since both layers can be a thermoplastic elastomer polyester-based composition comprising a crystalline polyester, see abstract) in a hose for the purpose of providing excellent oil, cold and heat resistance (applies to instant claims 3-5).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided an inner layer comprising a polyester-based elastomer and an outer layer formed on an outside of the inner layer and comprising a crystalline polyester-based resin, an inner layer comprising a crystalline polyester-based resin and outer layer formed on an outside of the inner layer and comprising a polyester-based elastomer in the tube of Kobayashi in order to provide excellent oil, cold and heat resistance as taught or suggested by JP 2000290483.

The addition of another polyester-based elastomer layer is a duplication of parts which has been found to obvious and within the level of one ordinary skill in the art (MPEP 2144). It would have been obvious to one of ordinary skill in the art to have provided another polyester-based elastomer in order to provide excellent oil, cold and heat resistance (applies to instant claim 5).

With regards to the surface resistivity recited in claims 16-18, it has been found the finding the workable or optimum range for a result effective variable, absent clear and convincing evidence of an unexpected result, is obvious and well within the level of

Art Unit: 1772

one of ordinary skill in the art (MPEP 2144). It would have been obvious to one of ordinary skill in the art to have provided the recited surface resistivities in order to dissipate static charge (applies to instant claims 16-18).

9. Claims 6-7 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi et al. (US 4125032) in view of Rau (US 4510968).

Kobayashi fails to disclose wherein the tube is a fuel feed tube usable within an engine compartment of a motor vehicle, wherein the tube further comprises a bellows portion extending at least part of its length.

Rau discloses a tube which is a fuel feed tube usable within an engine compartment of a motor vehicle, wherein the tube further comprises a bellows portion extending at least part of its length (column 1, lines 1-6, column 1, lines 50-56) (applies to instant claims 6-7 and 11-12). It would have been obvious to employ the materials in a fuel feed tube comprising a bellows portion in order to provide improved heat resistance.

10. Claims 8-10, 13-15 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kobayashi et al. (US 4125032) in view of JP 2000290483 (English abstract provided herein), as applied to claims 3-5 and 16-18 above, and further in view of Rau (US 4510968).

Kobayashi fails to disclose wherein the tube is a fuel feed tube usable within an engine compartment of a motor vehicle, wherein the tube further comprises a bellows portion extending at least part of its length.

Rau discloses a tube which is a fuel feed tube usable within an engine compartment of a motor vehicle, wherein the tube further comprises a bellows portion extending at least part of its length (column 1, lines 1-6, column 1, lines 50-56). It would have been obvious to employ the materials in a fuel feed tube comprising a bellows portion in order to provide improved heat resistance.

With regards to the surface resistivity recited in claims 19-21, it has been found the finding the workable or optimum range for a result effective variable, absent clear and convincing evidence of an unexpected result, is obvious and well within the level of one of ordinary skill in the art (MPEP 2144). It would have been obvious to one of ordinary skill in the art to have provided the recited surface resistivities in order to dissipate static charge (applies to instant claims 19-21).

ANSWERS TO APPLICANT'S ARGUMENTS

11. Applicant's arguments filed 9/12/05 have been carefully considered but are moot in view of the new grounds for rejection.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 1772

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1772

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael C. Miggins
Primary Examiner
Art Unit 1772

A handwritten signature in black ink, appearing to read "Michael C. Miggins", with a stylized flourish at the end.

MCM
November 28, 2005